SCR.A/756/2005 1/6 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 756 of 2005
with
CRIMINAL MISCELLANEOUS APPLICATION NO.7701 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANTSING GURUDEVSING JAT - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NAVIN K PAHWA for Petitioner No(s).: 1.
Mr.Kogje, Addl.PUBLIC PROSECUTOR for Respondent No(s).: 1.
None for Respondent No(s).: 2.
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 19/07/2005

ORAL JUDGMENT

1.With the consent of learned advocates for the parties, matter is taken up for final hearing today.

2. It appears that on facts there is no dispute that the vehicle of the petitioner bearing Reg.No.RJ-13-G-4991 is seized and custody is taken over by the police in connection with the CR No.III-75/05 for the offences under Bombay Prohibition Act. As per the prosecution case, the vehicle was used for transportation of liquor which is prohibited in the State of Gujarat. It appears that the petitioner applied to the Ld.Magistrate for giving custody of the vehicle, but the Ld.Msgistrate rejected the said application as per order dated 30.4.2005. The petitioner carried the matter before the Ld.Sessions Judge by preferring revision and it appears that the revision is also dismissed as per order dated 21.1.05 passed by the Ld.Sessions Judge. It is, under these circumstances, the petitioner has approached this court.

3. Heard Mr.Pahwa for the petitioner and Mr.Kogje, Ld.APP for the State.

4. In my view, the matter is covered by the decision of the Apex Court in the matter of Sunderbhai Ambalal Desai vs State of Gujarat reported in AIR 2003 SC 638, It deserves to be recorded that in the said decision the Apex Court while considering the question of exercise of power under section 451

Cr.P.C for vehicles at paras 15, 16, 17 and 18 it was observed as under:

"*15. Ld.Senior Counsel Mr.Dholakia appearing for the State of Gujarat further submitted that at present in the police station premises number of vehicles kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to handover such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the court at any point of time.*

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long time. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for the return of the said vehicles, if required at any point of time. This can be done pending hearing of application for return of such vehicles.

18. In case where the vehicle is not claimed by the accused,owner or the insurance company or by third person, then such vehicles may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession the vehicle may be sold as per the directions of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

5.If the matter examined in the light of the observations made by the Apex Court, it appears that the petitioner is a registered owner of the vehicle and no other person has claimed the custody of the vehicle. The investigation is over and now the vehicle is not required for further investigation. The only aspect which is required to be considered is for securing of the production of the vehicle as and when required by the police or by the court. It appears that the petitioner is from outside Gujarat and as per the address he is from Punjab State. Keeping in view the said aspects, strict conditions are required to be imposed for ensuring the production of vehicle as and when required for trial by court or by the police,

6.Mr.Pahwa, Ld.advocate for the petitioner submitted that the petitioner is a driver and his livelihood is dependent upon the transport business by the truck in question and therefore he submitted that the personal bond may be sufficient for releasing the vehicle in question. Mr.Kogje, Ld.APP for the State submitted that strict conditions are required and this court impose the condition of directing the petitioner to deposit the cash amount of Rs.2 lacs in addition to the security to ensure the production of the vehicle as and when required.

7.Considering the facts and circumstances of the case I find that the value of the vehicle is Rs.12,00,000/- and the value of goods transported is of Rs.13,59,700/- and therefore considering the facts and circumstances of the case, I find that if the petitioner is directed to deposit amount of Rs.1,00,000/- in cash or in the alternative bank guarantee for Rs.1,00,000/- with the additional condition of personal bond as well as surety of Rs,1,50,000/-, the same would sufficiently take care for ensuring that the vehicle is made available to the court as and when required. In addition to the above, petitioner should also file undertaking before the trial court that the vehicle shall not be transferred or alienated, in any manner, without prior permission of the court concerned.

8.In view of the above, the orders passed by the learned Magistrate as well as the Ld.Sessions Judge are quashed and set aside and it is directed that if the petitioner deposits amount of Rs.1,00,000/- in cash or in the alternative the petitioner gives bank guarantee for a sum of Rs.1,00,000/- in lieu of cash and executes personal bond and surety for Rs.1,50,000/- and files undertaking to the effect that he shall not transfer or alienate the vehicle in any manner without prior permission of the

court of Ld.Magistrate and shall produce the vehicle as and when required by the police/court and then the custody of vehicle in question shall be handed over to the petitioner immediately after compliance of all the aforesaid conditions before the trial court.

9.The petition is allowed to the aforesaid extent. Rule made absolute to the aforesaid extent.

10.In view of the order passed in main SCR.A No.756/05 no order is required to be passed in Cr.M.A.No.7701/05, hence, disposed of accordingly.

(JAYANT PATEL,J)

17.7.05/murty